

- ~~[(49) Class 49: distilled alcoholic liquors;~~
~~[(50) Class 50: merchandise not otherwise classified;~~
~~[(51) Class 51: cosmetics and toilet preparations; and~~
~~[(52) Class 52: detergents and soaps].~~

(c) The classes of services are:

- (1) ~~[Class 100: miscellaneous;~~
 [(2)] Class 35 [101]: *Advertising* [advertising] and business;
 (2) [(3)] Class 36 [102]: *Insurance* [insurance] and financial;
 (3) [(4)] Class 37 [103]: *Construction* [construction] and repair;
 (4) [(5)] Class 38 [104]: *Communication* [communication];
 (5) [(6)] Class 39 [105]: *Transportation* [transportation] and storage;
 (6) [(7)] Class 40 [106]: *Material* [material] treatment; [and]
 (7) [(8)] Class 41 [107]: *Education* [education] and entertainment; *and*
 (8) Class 42: *Miscellaneous*.

SECTION 2. This Act applies only to an application filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect when the application was filed, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 20, 1989, by the following vote: Yeas 31, Nays 0; passed the House on May 22, 1989, by a non-record vote.

Approved June 14, 1989.

Effective Sept. 1, 1989.

CHAPTER 866

S.B. No. 843

AN ACT

relating to the offense of barratry, certain contracts for legal services, and to appearances in court by certain attorneys; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 38.01, Penal Code, is amended to read as follows:

Sec. 38.01. DEFINITIONS. In this chapter:

- (1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.
- (2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.
- (3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.
- (4) "Economic benefit" means anything reasonably regarded as an economic gain or advantage.

(5) "Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes).

(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "Hospital" means a general hospital or special hospital as defined by the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes).

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity.

(9) [(5)] "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

(10) "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(11) "Solicit" means to communicate in person or by telephone with a claimant or defendant or with a member of the claimant's or defendant's family when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include communicating by a family member of the person receiving a communication, communicating by an attorney who has a prior attorney-client relationship with the person receiving the communication, or communicating with a qualified nonprofit organization for the purpose of educating laymen to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services.

SECTION 2. Section 38.12, Penal Code, is amended to read as follows:

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain an economic [a] benefit for himself, [~~or to harm another~~] he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.

(b) Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.

(c) Except as provided by Subsection (d) of this section, an [An] offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a)(3) or (a)(4) of this section is a felony of the third degree if it is shown on the trial of the offense that:

(1) the defendant has previously been convicted under Subsection (a)(3) or (a)(4) of this section; and

(2) the solicitation is performed in whole or in part:

(A) in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;

(B) by using a person who is an employee of

(i) this state;

(ii) a political subdivision of this state, including a county, municipality, or special purpose district or authority; or

(iii) a hospital or funeral establishment; or

(C) by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.

(e) Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules.

SECTION 3. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.065 to read as follows:

Sec. 82.065. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES. (a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.

(b) A contingent fee contract for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Disciplinary Rules of the State Bar of Texas regarding barratry by attorneys or other persons.

SECTION 4. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.066 to read as follows:

Sec. 82.066. ATTORNEY MAY NOT APPEAR. An attorney may not appear before a judge or justice in a civil case if the attorney is related to the judge or justice by affinity or consanguinity within the first degree.

SECTION 5. (a) Section 2 of this Act relating to the offense of barratry applies only to offenses committed on or after the effective date of the Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and that law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Section 3 of this Act relating to contingent fee contracts for legal services applies only to contracts executed on or after the effective date of this Act.

(c) Section 4 of this Act relating to court appearances applies only to appearances in court for causes of action for which the original petition was filed on or after the effective date of this Act.

SECTION 6. This Act takes effect September 1, 1989.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 20, 1989, by a viva-voce vote; May 19, 1989, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 1989, House granted request of the Senate; May 25, 1989, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 18, 1989, by a non-record vote; May 24, 1989, House granted request of the Senate for appointment of Conference Committee; May 27, 1989, House adopted Conference Committee Report by a non-record vote.

Approved June 14, 1989.

Effective Sept. 1, 1989.

CHAPTER 867

S.B. No. 844

AN ACT

relating to the authority of the board of a harbor and port facility to employ public security officers.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (b), Section 3, Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If the management and control of the improvements and facilities is placed in the hands of a board of trustees by ordinance or Charter under Subsection (a) of this section, the board of trustees constitutes a body politic and corporate for the purpose of issuing bonds or other obligations and shall have and exercise, in addition to the powers enumerated in the ordinance or Charter, the following powers and authority:

(1) to exercise full management, control, maintenance, and operation of the improvements and facilities constituting the ports and harbors of the city;

(2) to employ a general manager and other officers, employees, and representatives as the board may consider appropriate and to fix their duties and compensation;

(3) notwithstanding the provisions or restrictions of any general or special law or Charter to the contrary, to prepare and adopt budgets for the operation of the ports and harbors of the city, fix charges for services and facilities, authorize expenditures, and manage and control the income and revenue of the city's ports and harbors;

(4) to determine policies and establish rules and procedures for the operation of the ports and harbors of the city;

(5) to acquire property and interest in property for the purposes set forth in Section 1 of this Act in the manner provided by this Act and to construct improvements and facilities on the property;

(6) to contract in its own name, but not in the name of the city. Except as otherwise provided by this Act, all such contracts involving the expenditure of more than \$10,000 shall be awarded only pursuant to competitive bids. However, competitive bids are not required for contracts for personal or professional services, real estate transactions, operation of port facilities or improvements under specific agreements for a limited term, or insurance, or if the board of trustees determines that the time delay posed by the competitive bidding process would prevent or substantially impair the conduct of port operation;

(7) to issue in the name of the board, with the consent of the governing body of the city, revenue bonds or other obligations payable from revenues in the manner set out in this Act for the purpose of providing funds for any of the improvements and facilities provided by Section 1 of this Act or to refund any previously issued bonds or other obligations;

(8) to issue in the name of the board, with the consent of the governing body of the city, current expense warrants drawn against all or any part of the current revenues of the board to pay current expenses during the current fiscal year of the board or any part of the current fiscal year. However, in no event shall the aggregate amount of the warrants that are outstanding at any time during any fiscal year exceed 50 percent of the revenues budgeted for that fiscal year after subtracting from the budgeted revenues all principal and interest on bonds or obligations other than current expense warrants to be paid from the revenues during the fiscal year;